

1 Daniel R. Watkins
2 Nevada State Bar No. 11881
3 dw@wl-llp.com
4 Michael A. DiRenzo
5 Nevada State Bar No. 13104
6 mdirenzo@wl-llp.com
7 WATKINS & LETOFSKY, LLP
8 8935 S. Pecos Rd., Ste. 22A
9 Henderson, NV 89074
10 Office:(702) 901-7553; Fax: (702) 974-1297
11 Attorneys for Plaintiff, Michael Miller

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL MILLER,

Plaintiff,

vs.

REPUBLIC SILVER STATE DISPOSAL,
INC., a domestic corporation; and DOES 1-
50,

Defendants.

Case No.: 2:21-cv-01031

COMPLAINT FOR DAMAGES

(DEMAND FOR JURY TRIAL)

COMES NOW, Plaintiff, Michael Miller and files this civil action against Defendants, and each of them, for violations of The Americans with Disabilities Act, 42 U.S.C. §12101 et. seq., as well as violations under Nevada Revised Statutes §613.330 et seq.; and related claims under Nevada law, seeking damages, and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction and venue over this action pursuant to The Americans with Disabilities Act, 42 U.S.C. §12101 et seq., 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. §2000e-5(f)(3), which confer original jurisdiction on federal district courts in suits to address the deprivation of rights, privileges and immunities secured by the United States Constitution and federal law.

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1 19. Plaintiff did as instructed, and after approximately two hours of attempting to fix
2 the malfunction in the heat, Plaintiff collapsed from heat exhaustion.

3 20. Plaintiff was transported by ambulance to the hospital, was treated, and released
4 the same day. The doctor cleared Plaintiff to return to work the following day.

5 21. Upon returning to work on July 11, 2020, Plaintiff provided the doctor's notice to
6 his supervisor indicating he was cleared to return to work. After doing so, the supervisor instructed
7 Plaintiff to go home and return to work on his next scheduled shift, which was July 13, 2020.

8 22. On or about July 13, 2020, Plaintiff was instructed over the phone day by his
9 manager Sergio Lopez to see the company's worker's compensation doctor since the incident
10 happened at work.

11 23. Plaintiff went to Dr. Klausner, the worker's compensation doctor, on or about July
12 14, 2020. Dr. Klausner indicated that he would like to review the hospital records, but Plaintiff
13 was clear to return to work.

14 24. On or about July 16, 2020, Plaintiff received a phone call from Defendant's Human
15 Resources department notifying him that they need clearance from his cardiologist and pain
16 management doctors, and that they were placing him on unqualified medical leave.

17 25. Plaintiff, his cardiologist, and his pain management doctor made numerous
18 attempts to clarify his condition and provide documentation that he was cleared to return to work.

19 26. On or about July 28, 2020, Dr. Klausner indicated that Plaintiff was unfit to return
20 to work and even went so far as to attempt to have Plaintiff's Commercial Driver's License revoked
21 by the Department of Motor Vehicles. That request was subsequently denied.

22 27. On August 13, 2020, Defendant discharged Plaintiff for failure to meet required
23 standards with regards to his Medical Card and Commercial Driver's License.

24 28. Plaintiff's Medical Card and Commercial Driver's License were never suspended
25 despite attempts by Dr. Klausner to do so.

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COUNT I

DISABILITY DISCRIMINATION

Americans with Disabilities Act (42 U.S.C. §12101, et seq.)

NV Rev. Stat. §613.330 et seq.

(Against Defendants Republic Silver State Disposal, Inc. and DOES 1-50)

29. Plaintiff hereby incorporates paragraphs 1 through 28 of this Complaint as though fully set forth herein.

30. Plaintiff has a disability within the meaning of the Americans with Disabilities Act (“ADA”). Plaintiff suffers from heart problems and takes medication to manage it. A “disability” under the ADA is a physical or mental impairment or being regarded as having a physical or mental impairment that substantially limits one or more of the major life activities of such individual. The terms disability and physical or mental impairment include (1) any physiological disorder, or condition affecting one or more of the following body systems: neurological, musculoskeletal, and others; or (2) any mental or psychological disorder such as emotional or mental illnesses, among others.

31. Plaintiff was a qualified individual, meaning an individual with a disability who, with or without a reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. At all times during his employment Plaintiff satisfied the requisite skill, experience, education, and other job-related requirements of the employment position and could perform the essential functions of the position with or without reasonable accommodations.

32. Republic knew, or had reason to know, that (a) Plaintiff has a disability; and (b) Plaintiff was experiencing workplace problems because of the disability.

33. Republic initiated but failed to engage in a reasonable, good faith interactive process with Plaintiff to determine what reasonable accommodations would enable Plaintiff to work, if any. Republic could have made a reasonable accommodation, if necessary, prior to discharging Plaintiff that would have enabled Plaintiff to perform the essential functions of the job but did not do so.

1 41. Plaintiff experienced heat stroke symptoms that Republic perceived to be related to
2 Plaintiff's history of heart problems. A "disability" under the ADA is a physical or mental
3 impairment or being regarded as having a physical or mental impairment that substantially limits
4 one or more of the major life activities of such individual. The terms disability and physical or
5 mental impairment include (1) any physiological disorder, or condition affecting one or more of
6 the following body systems: neurological, musculoskeletal, and others; or (2) any mental or
7 psychological disorder such as emotional or mental illnesses, among others.

8 42. Plaintiff was a qualified individual, meaning an individual with a perceived
9 disability who, with or without a reasonable accommodation, could perform the essential functions
10 of the employment position that such individual holds or desires. At all times during his
11 employment Plaintiff satisfied the requisite skill, experience, education, and other job-related
12 requirements of the employment position and could perform the essential functions of the position
13 with or without reasonable accommodations.

14 43. Plaintiff at no time requested an accommodation due to his disability but Defendant
15 perceived that (a) Plaintiff had a disability; and (b) Plaintiff was experiencing workplace problems
16 because of the perceived disability.

17 44. Defendant failed to initiate and/or engage in a reasonably good faith interactive
18 process with Plaintiff to determine what reasonable accommodations, if any, would enable
19 Plaintiff to work. Defendant could have made a reasonable accommodation, if necessary, prior to
20 the alleged incident that would have enabled Plaintiff to perform the essential functions of the job.

21 45. The potential accommodation(s) if required would have been reasonable and would
22 not have imposed an undue hardship on the operation of Defendant. Defendant unreasonably
23 failed to provide any accommodation(s).

24 46. Plaintiff's perceived disability was a substantial motivating factor for Defendant's
25 disparate treatment of Plaintiff and for its unlawful employment practices that led to Plaintiff's
26 discharge. Defendant's decision to terminate Plaintiff and to treat Plaintiff differently than other
27 employees without disabilities affected his employment, including assignments, discipline,
28 promotion, termination, and benefits.

47. Defendant, through its agents or supervisors, failed to adequately supervise, control, discipline, and/or otherwise penalize the conduct, acts, and failures to act of Defendants and Defendant's supervisors and Human Resources Department as described above, thereby ratifying the unlawful conduct of its supervisors and Human Resources Department.

48. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's federally protected rights.

49. Plaintiff requests relief as described in the Prayer for Relief below.

COUNT III

RETALIATION

Americans with Disabilities Act (42 U.S.C. §12101 et seq.)

NV Rev. Stat. §613.330 et seq.

(Against Defendants Republic Silver State Disposal, Inc. and DOES 1-50)

50. Plaintiff hereby incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. Plaintiff engaged in an activity protected under federal and state laws by reporting his disability and for following through with worker's compensation treatment, as instructed, as a result of the incident that left him injured.

52. Plaintiff was subjected to the adverse employment actions described herein because of his attempts to exert his rights under the ADA and NRS 613.330 et seq.

53. Plaintiff was subjected to the adverse employment actions described herein because of his participation in the protected activity and adverse employment action would not have occurred but for that participation.

54. As a direct and proximate result of Defendant's willful, knowing, and intentional discrimination and retaliation against Plaintiff, he has suffered and will continue to suffer pain, humiliation, and emotional distress.

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1 55. Plaintiff has suffered and will continue to suffer a loss of earnings and other
2 employment benefits and job opportunities. Plaintiff is thereby entitled to general and
3 compensatory damages in amounts to be proven at trial.

4 56. Defendant's unlawful actions were intentional, willful, malicious and/or done with
5 reckless disregard for Plaintiff's federally protected rights.

6 57. Plaintiff requests relief as described in the Prayer for Relief below.

7
8 **COUNT IV**

9 **TORTIOUS DISCHARGE**

10 **Americans with Disabilities Act (42 U.S.C. §12101 et seq.)**

11 **NV Rev. Stat. §613.330 et seq.**

12 **(Against Defendants Republic Silver State Disposal, Inc. and DOES 1-50)**

13 58. Plaintiff hereby incorporates paragraphs 1 through 57 of this Complaint as though
14 fully set forth herein.

15 59. Nevada's worker's compensation laws reflect a clear public policy favoring
16 economic security for employees injured while in the course and scope of their employment.
17 *Hansen v Harrah's* 100 Nev. 60, 675 P.2d 394 (1984).

18 60. A retaliatory discharge of an employee in reaction to the filing of a workmen's
19 compensation claim is actionable in tort. *Hansen v Harrah's* 100 Nev. 60, 675 P.2d 394 (1984).

20 61. Defendant deliberately interfered with Plaintiff's statutorily protected rights and
21 violated public policy when they forced him to seek worker's compensation treatment and then
22 fired Plaintiff because he participated in the worker's compensation treatment. Defendants used
23 the incorrect diagnoses from the workman's compensation treatment that the Defendant forced
24 Plaintiff to participate in. In so doing, Defendant ignored the diagnoses and opinions of Plaintiff's
25 private doctors.

26 62. Defendant's actions were willful, malicious, fraudulent, oppressive, and/or
27 calculated to discourage Plaintiff and other Republic employees from pursuing their rights under
28 Federal and/or Nevada law.

63. Plaintiff requests relief as described in the Prayer for Relief below.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays that this Court grant the following relief:

1. Economic Loss for Back Pay and Front Pay, plus prejudgment interest;
2. Compensatory Damages;
3. Reasonable attorneys' fees;
4. Punitive Damages;
5. Costs of suit incurred herein; and
6. Such other and further relief as the court deems just and proper.

DATED this 1st day of June, 2021.

WATKINS & LETOFSKY, LLP

/s/ Daniel R. Watkins

By: _____

Daniel R. Watkins, Esq.
Michael A. DiRenzo, Esq
8935 S. Pecos Rd., Ste. 22A
Henderson, NV 89074
Attorneys for Plaintiff, Michael Miller

REQUEST FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure 38(b) and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a, PLAINTIFF demands a trial by jury in this action on all issues so triable.

Dated this 1st day of June, 2021.

WATKINS & LETOFSKY, LLP

/s/ Daniel R. Watkins

By: _____

Daniel R. Watkins, Esq.
Michael A. DiRenzo, Esq.
Attorneys for Plaintiff, Michael Miller

Exhibit 1

NOTICE OF RIGHT TO SUE
DATED March 31, 2021

EEOC Form 161-B (11/2020)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Michael Miller

From: Los Angeles District Office
 255 E. Temple St. 4th Floor
 Los Angeles, CA 90012

☐

On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

34B-2021-00280

Karrie L. Maeda,
State, Local & Tribal Program Manager

(213) 785-3002

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☐

More than 180 days have passed since the filing of this charge.

☒

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

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The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.

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The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Rosa M. Viramontes,
District Director

March 31, 2021

(Date Issued)

Enclosures(s)

cc:

REPUBLIC SILVER STATE DISPOSAL INC.
770 E. Sahara Ave.Ste. 400
Las Vegas, NV 89104